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BEFORE THE ARIZONA CORPORATION COMMISSION

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Arizona Corporation Commission

DOCKETED

COMMISSIONERS

ARIZONA CORPORATION COMMISSION
DOCKET CONTROL

AUG 3 2010

KRISTIN K. MAYES, Chairman
GARY PIERCE
PAUL NEWMAN
SANDRA D. KENNEDY
BOB STUMP

DOCKETED BY

In the matter of:
FIVE STAR TREE SERVICE AND
LANDSCAPES, LLC, an Arizona limited
liability company, aka FIVE STAR TREE
SERVICE
RICHARD MCCULLUM, JR. a married man
LEAH ATWOOD, a married woman
Respondents.

DOCKET NO. S-20715A-09-0564
AMENDED TEMPORARY ORDER TO
CEASE AND DESIST AND NOTICE OF
OPPORTUNITY FOR HEARING

NOTICE: THIS ORDER IS EFFECTIVE IMMEDIATELY
EACH RESPONDENT HAS 20 DAYS TO REQUEST A HEARING
EACH RESPONDENT HAS 30 DAYS TO FILE AN ANSWER

The Securities Division ("Division") of the Arizona Corporation Commission ("Commission") files this Amended Temporary Cease and Desist and Notice of Opportunity for Hearing to add an additional party and to amend the caption.

The Division alleges that respondents FIVE STAR TREE SERVICE AND LANDSCAPES, LLC aka FIVE STAR TREE SERVICE, RICHARD MCCULLUM, JR. and LEAH ATWOOD are engaging in or are about to engage in acts and practices that constitute violations of A.R.S. § 44-1801, *et seq.*, the Arizona Securities Act ("Securities Act"), and that the public welfare requires immediate action.

The Division further alleges RICHARD MCCULLUM, JR. and LEAH ATWOOD are person controlling FIVE STAR TREE SERVICE AND LANDSCAPES, LLC within the meaning of A.R.S.

1 §44-1999, so that they are jointly and severally liable under A.R.S. § 44-1999 to the same extent as
2 FIVE STAR TREE SERVICE AND LANDSCAPES, LLC for violations of the Securities Act.

3 **I.**

4 **JURISDICTION**

5 1. The Commission has jurisdiction over this matter pursuant to Article XV of the
6 Arizona Constitution and the Securities Act.

7 **II.**

8 **RESPONDENT**

9 2. FIVE STAR TREE SERVICE AND LANDSCAPES, LLC aka FIVE STAR TREE
10 SERVICE ("FIVE STAR TREE"), is an Arizona limited liability company formed on July 29,
11 2002. According to the Articles of Organization, FIVE STAR TREE is a manager-managed limited
12 liability company.

13 3. RICHARD MCCULLUM, JR. ("R. MCCULLUM JR."), at all relevant time was an
14 Arizona resident married to LEAH ATWOOD. According to the agreements signed with investors,
15 R. MCCULLUM, JR. is the managing member of FIVE STAR TREES. In addition, R.
16 MCCULLUM, JR. is a co-signer on the FIVE STAR TREE bank account.

17 4. LEAH ATWOOD ("ATWOOD"), at all relevant time was an Arizona resident
18 married to R. MCCULLUM JR. According to the Articles of Organization, ATWOOD is the
19 managing member of FIVE STAR TREE. ATWOOD is the co-signer on the FIVE STAR TREE
20 bank account.

21 5. FIVE STAR TREE, R. MCCULLUM JR. and ATWOOD may be referred to
22 collectively as "Respondents".

23 6. R. MCCULLUM, JR. and ATWOOD are husband and wife. At all times relevant,
24 R. MCCULLUM, JR. and ATWOOD were acting for their own benefit and for the benefit or in
25 furtherance of their marital community.

26 ...

III.

FACTS

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3 7. Beginning in or around about July of 2008 through the present, Respondents began
4 offering and selling investment opportunities to investors. The funds would be invested in
5 “common fund for the purpose of entering into Private Placement Program[s].” Respondents have
6 raised at least \$200,000 from at least three investors located outside of Arizona.

7 8. The known investors spoke directly with R. MCCULLUM JR. prior to making their
8 investments. R. MCCULLUM JR. told the investors that the money would be used to invest in a
9 “trading platform.” At least one investor was told that the investment was guaranteed to pay 500
10 percent in 15 days. According to the investors, they had a passive role in the investment. Another
11 investor was told that the chosen program was a “five times money program” in which the return to
12 the investor would be five times the amount invested, to be paid back in ten days. The investors’
13 only obligation was to invest money.

14 9. R. MCCULLUM JR. stated that he had arrangements with a “Foundation” which
15 had the “trading platform” for investors. R. MCCULLUM JR. stated that he would pool the
16 investors’ funds to reach the minimum one million dollar investment figure.

17 10. R. MCCULLUM, JR. on behalf of FIVE STAR TREE as the “Agent” entered into
18 “Joint Venture Agreement” (“JV Agreement”) with each investor. According to the JV
19 Agreements, investors “make contributions to a common fund for the purpose of entering into
20 Private Placement Program (PPP) for a minimum of USD One Million Dollars (US
21 \$1,000,000.00), called the business interest.” The JV Agreement further states that the “Joint
22 Venture [is] to acquire and hold the business interest in common and to provide the finances
23 required to enter into the Private Placement Program.” The investors receive an “undivided
24 fractional part in the business interest.”

25 11. The JV Agreement further states that FIVE STAR TREE would act as the
26 “nominee” for the investors. The investment will be held in the name of R. MCCULLUM, JR. on

1 behalf of FIVE STAR TREE. R. MCCULLUM, JR. on behalf of FIVE STAR TREE as the Agent
2 will “pay a total profit to the [investor] 5 times the money within 15 business days of receipt of
3 funds earned profits from the PPP [Private Placement Program].” R. MCCULLUM, JR. signed the
4 JV Agreements as the “managing member” of FIVE STAR TREE.

5 12. The investors’ funds were pooled into one bank account. Per R. MCCULLUM
6 JR.’S instructions, the investors wired their investment funds directly to the bank account of FIVE
7 STAR TREE he and ATWOOD controlled. In some instances, immediately after the wire transfer
8 is credited to the FIVE STAR TREE bank account, the investors’ funds are used to pay personal
9 expenses of Respondents.

10 13. Upon information and belief, the Respondents are to receive five (5) percent of the
11 “total gross income” as a fee.

12 **IV.**

13 **VIOLATION OF A.R.S. § 44-1841**

14 **(Offer and Sale of Unregistered Securities)**

15 14. From on or about July of 2008 through the present, Respondents have been offering
16 or selling securities in the form of investment contracts within or from Arizona.

17 15. The securities referred to above are not registered pursuant to Articles 6 or 7 of the
18 Securities Act.

19 16. This conduct violates A.R.S. § 44-1841.

20 **V.**

21 **VIOLATION OF A.R.S. § 44-1842**

22 **(Transactions by Unregistered Dealers or Salesmen)**

23 17. Respondent is offering or selling securities within or from Arizona while not registered
24 as a dealers or salesmen pursuant to Article 9 of the Securities Act.

25 18. This conduct violates A.R.S. § 44-1842.

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VI.

VIOLATION OF A.R.S. § 44-1991

(Fraud in Connection with the Offer or Sale of Securities)

19. In connection with the offer or sale of securities within or from Arizona, Respondent is directly or indirectly: (i) employing a device, scheme, or artifice to defraud; (ii) making untrue statements of material fact or omitting to state material facts that are necessary in order to make the statements made not misleading in light of the circumstances under which they are made; or (iii) engaging in transactions, practices, or courses of business that operate or would operate as a fraud or deceit upon offerees and investors. Respondent's conduct includes, but is not limited to, the following:

a) Respondents represented to offerees and investors that their investment funds would be used to fund the purchase of a "Private Placement Program" when in fact the funds were used to pay personal expenses of Respondents; and

b) Respondents misrepresented to offerees and investors that the investment was guaranteed to pay 500 percent in 15 days when in fact the funds were used to pay personal expenses and no funds appear to have been invested in any type of trading platform."

20. This conduct violates A.R.S. § 44-1991.

21. RICHARD MCCULLUM, JR. and ATWOOD directly or indirectly controlled person or entities within the meaning of A.R.S. § 44-1999, specifically FIVE STAR TREE. Therefore, RICHARD MCCULLUM, JR. and ATWOOD are jointly and severally liable under A.R.S. §44-1999 to the same extent as FIVE STAR TREE for violations of A.R.S. § 44-1991.

VII.

TEMPORARY ORDER

Cease and Desist from Violating the Securities Act [or IM Act]

THEREFORE, based on the above allegations, and because the Commission has determined that the public welfare requires immediate action,

1 IT IS ORDERED, pursuant to A.R.S. § 44-1972(C) and A.A.C. R14-4-307, that Respondents,
2 Respondent's agents, servants, employees, successors, assigns, and those persons in active concert or
3 participation with Respondents CEASE AND DESIST from any violations of the Securities Act.

4 IT IS FURTHER ORDERED that this Temporary Order to Cease and Desist shall remain in
5 effect for 180 days unless sooner vacated, modified, or made permanent by the Commission.

6 IT IS FURTHER ORDERED that this Order shall be effective immediately.

7 **VIII.**

8 **REQUESTED RELIEF**

9 The Division requests that the Commission grant the following relief:

10 1. Order Respondents to permanently cease and desist from violating the Securities Act,
11 pursuant to A.R.S. §44-2032;

12 2. Order Respondents to take affirmative action to correct the conditions resulting from
13 Respondent's acts, practices, or transactions, including a requirement to make restitution pursuant to
14 A.R.S. § 44-2032;

15 3. Order Respondents to pay the state of Arizona administrative penalties of up to five
16 thousand dollars (\$5,000) for each violation of the Securities Act, pursuant to A.R.S. § 44-2036;

17 4. Order that the marital community of Respondents MCCULLUM and ATWOOD is
18 subject to any order of restitution, rescission, administrative penalties, or other appropriate affirmative
19 action pursuant to A.R.S. § 25-215; and

20 5. Order any other relief that the Commission deems appropriate.

21 **IX.**

22 **HEARING OPPORTUNITY**

23 Each respondent may request a hearing pursuant to A.R.S. § 44-1972 and A.A.C. Rule 14-4-
24 307. **If a Respondent requests a hearing, the requesting respondent must also answer this**
25 **Temporary Order and Notice.** A request for hearing must be in writing and received by the
26 Commission within 20 days after service of this Temporary Order and Notice. The requesting

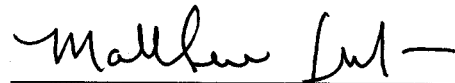
1 Additionally, the answering respondent must serve the Answer upon the Division. Pursuant
 2 to A.A.C. R14-4-303, service upon the Division may be made by mailing or by hand-delivering a
 3 copy of the Answer to the Division at 1300 West Washington, 3rd Floor, Phoenix, Arizona, 85007,
 4 addressed to Wendy Coy, Senior Counsel.

5 The Answer shall contain an admission or denial of each allegation in this Temporary Order
 6 and Notice and the original signature of the answering respondent or the respondent's attorney. A
 7 statement of a lack of sufficient knowledge or information shall be considered a denial of an
 8 allegation. An allegation not denied shall be considered admitted.

9 When the answering respondent intends in good faith to deny only a part or a qualification
 10 of an allegation, the respondent shall specify that part or qualification of the allegation and shall
 11 admit the remainder. Respondent waives any affirmative defense not raised in the Answer.

12 The officer presiding over the hearing may grant relief from the requirement to file an
 13 Answer for good cause shown.

14 BY ORDER OF THE ARIZONA CORPORATION COMMISSION, this 3 day of
 15 August, 2010.

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 17 Matthew J. Neubert
 18 Director of Securities
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